

THE CITY OF AUSTIN, TEXAS
Through the Austin Housing Finance Corporation

HOUSING TRUST FUND
LOCAL HOUSING VOUCHER PROGRAM

AGREEMENT TO ENTER INTO A
HOUSING ASSISTANCE PAYMENT CONTRACT

NEW CONSTRUCTION OR REHABILITATION

Parties

This Agreement to Enter into Housing Assistance Payments Contract ("Agreement") is between The City of Austin, Texas (the "City"), acting through the Austin Housing Finance Corporation ("AHFC"); and Espero Austin at Rutland, LP (the "Owner").

Purpose

The Owner agrees to develop the Housing Assistance Payments Contract ("HAP Contract") units ("HAP Contract Units") in accordance with Exhibit B, and AHFC agrees that, upon timely completion of such development in accordance with the terms of the Agreement, AHFC will enter into a HAP Contract with the Owner of the HAP Contract Units.

The Owner has committed to providing 51 units in return for the HAP Contract amount. The HAP Contract amount of \$650,000 will be funded through the City of Austin's Housing Trust Fund Local Housing Voucher (LHV) program.

Significant Dates and Length of HAP Contract

Effective Date of the Agreement: The Agreement must be executed promptly after AHFC notice of proposal selection to the Owner has been given.

Effective Date for the Agreement to Enter into a HAP Contract: December 4, 2020

Effective Date for the LHV Subsidy Period: January 1, 2023

The Length of this HAP Contract is for a period of no less than 18 years, starting on the Effective Date for the LHV Subsidy Period. The Effective Date for the LHV Subsidy Period aligns with the expected stabilization of the proposed Development and subsequent leasing of HAP Contract Units. Thus, the Effective Date for the LHV Subsidy Period is subject to change through an Amendment to this Agreement if the Development experiences delays due to construction.

Funding for Initial Term of HAP Contract

Starting in the First Full Year of the Initial Term, and in each subsequent year in which the HAP Contract is effective, subject to the availability of sufficient appropriations from the City to the Housing Trust Fund, AHFC will obligate funding in the amount of \$650,000 to the Owner of the Development, as further explained in Exhibit B The City forward-commits funding sufficient for an Initial Term of three years. The HAP Contract can be renewed for an additional five three-year periods, resulting in a total Subsidy Period of, at a minimum, 18 years

Contents of Agreement

This Agreement consists of Part I, Part II, and the following Exhibits:

EXHIBIT A: The approved Statement of Work, including:

1. project site.
2. total number of units in project covered by this Agreement.
3. number of contract units by size and number of bedrooms and bathrooms.
4. services, maintenance, or equipment to be supplied by the Owner without charges in addition to the rent to Owner.
5. utilities available to the contract units, including a specification of utility services to be paid by the Owner (without charges in addition to rent) and utility services to be paid by the tenant.
6. estimated initial rent to Owner for the contract units.

EXHIBIT B: Subsidy Worksheet.

Nature of the Work

 X This Agreement is for New Construction of units to be assisted by the City of Austin Housing Trust Fund Project Based Rental Assistance Program.

 This Agreement is for Rehabilitation of units to be assisted by the City of Austin Housing Trust Fund Project Based Rental Assistance Program.

Schedule of Completion

Timely Performance of Work: The Owner agrees to begin work no later than July 1, 2021. In the event the work is not commenced, diligently continued and completed as required under this Agreement, AHFC may terminate this Agreement or take other appropriate action. The Owner agrees to report promptly to AHFC the date work is commenced and furnish AHFC with progress reports as required by AHFC.

Time for Completion: All work must be completed no later than December 31, 2022.

Delays: If there is a delay in the completion due to unforeseen factors beyond the Owner's control as determined by AHFC, AHFC agrees to extend the time for completion for an appropriate period as determined by AHFC.

Changes in Work

The Owner must obtain prior AHFC approval in writing for any change from the work specified in Exhibit A which would alter the design or quality of the construction of the project. AHFC is not required to approve any changes requested by the Owner. AHFC approval of any change may be conditioned on establishment of a lower initial rent to Owner at the amounts determined by AHFC.

If the Owner makes any changes in the work without prior AHFC written approval, AHFC may establish lower initial rents for the project in the amounts determined by AHFC.

AHFC may inspect the work during construction to ensure that work is proceeding on schedule, is being accomplished in accordance with the terms of the Agreement, meets the level of material described in Exhibit A and meets expected levels of workmanship.

Work completion

The work must be completed in accordance with Exhibit A. The Owner is solely responsible for completion of the work.

When the work is completed, the Owner must provide AHFC with the following:

1. A certification by the Owner that the work has been completed in accordance with all requirements of this Agreement.
2. A certificate of occupancy.

Inspection and Acceptance by AHFC of Completed HAP Contract Units

Completion of HAP Contract Units: Upon receipt of Owner notice of completion of HAP Contract Units, AHFC shall take the following steps:

1. Review all evidence of completion submitted by Owner.
2. Inspect the units to determine if the housing has been completed in accordance with this Agreement, including compliance with the HQS and any additional requirements imposed by AHFC under this Agreement.

Non-Acceptance: If AHFC determines the work has not been completed in accordance with this Agreement, including non-compliance with the HQS, AHFC shall promptly notify the Owner of this decision and the reasons for the non-acceptance. The parties must not enter into the HAP Contract.

Acceptance: If AHFC determines housing has been completed in accordance with this Agreement, and that the Owner has submitted all required evidence of completion, AHFC must submit the HAP Contract for execution by the Owner and must then execute the HAP Contract, prior to the Owner executing any lease agreements with any potential residents.

Acceptance where defects or deficiencies are reported:

If other defects or deficiencies exist, AHFC shall determine whether and to what extent the defects or deficiencies are correctable, whether the units will be accepted after correction of defects or deficiencies, and the requirements and procedures for such correction and acceptance.

Completion in Stages: Where completion in stages is provided for, the procedures of this paragraph shall apply to each stage.

Execution of HAP Contract

Time and Execution: Upon acceptance of the HAP Contract Units by AHFC, the Owner and AHFC will execute the HAP Contract.

Completion in Stages: Where completion in stages is provided for the number and types of units in each stage, and the initial rents to Owner for such units, shall be separately shown in Exhibit A of the contract for each stage. Upon acceptance of the first stage, the Owner shall execute the contract and the signature block provided in the contract for that stage. Upon acceptance of each subsequent stage, the Owner shall execute the signature block provided in the contract for such stage.

Form of Contract: The terms of the contract shall be provided for in a Housing Assistance Payments Contract. There shall be no change in the terms of the contract, compared to the terms set forth in this Agreement to Enter into a Housing Assistance Payment Contract, unless such change is approved by the City. The Housing Assistance Payments Contract will be executed upon completion of construction and before the Effective Date of the LHV Subsidy Period.

Survival of Owner Obligations: Even after execution of the contract, the Owner shall continue to be bound by all Owner obligations under this Agreement.

Initial determination of rents

The estimated amount of initial rent to the Owner shall be established in Exhibit B of this Agreement.

The initial amount of rent to the Owner is established at the beginning of the HAP Contract term.

The estimated and initial contract rent for each unit supported by the City of Austin Housing Trust Fund Local Housing Voucher Program will not exceed the amount authorized in accordance with HUD regulations and requirements, unless permitted in AHFC's sole discretion.

Uniform Relocation Act

A displaced person must be provided relocation assistance at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and implementing regulations at 49 CFR part 24.

The cost of required relocation assistance may be paid with funds provided by the Owner, or with local public funds, or with funds available from other sources. Payment of relocation assistance must be paid in accordance with the City requirements.

The acquisition of real property for a project to be assisted under the program is subject to the URA and 49 CFR part 24, subpart B.

AHFC will require the Owner to comply with the URA and 49 CFR Part 24.

In computing a replacement housing payment to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term “initiation of negotiations” means the execution of this Agreement between the Owner and AHFC.

Protection of In-Place Families

In order to minimize displacement of in-place families, if a unit to be placed under Contract is occupied by an eligible family on the proposal selection date, the in-place family must be placed on AHFC's waiting list (if they are not already on the list) and, once their continued eligibility is determined, given an absolute selection preference and referred to the project Owner for an appropriately sized unit in the project.

This protection does not apply to families that are not eligible to participate in the program on the proposal selection date.

The term “in-place family” means an eligible family residing in a proposed contract unit on the proposal selection date.

Assistance to in-place families may only be provided in accordance with the program regulations and other City requirements.

Termination of Agreement and HAP Contract

This Agreement and the HAP Contract may be terminated upon at least 30 days notice to the Owner by AHFC or the City if AHFC or the City determines at any time that the HAP Contract Units were or are not eligible for selection in conformity with the City's requirements.

Rights of the City if AHFC Defaults Under Agreement

If the City determines that AHFC has failed to comply with its obligations under this Agreement, or has failed to take appropriate action to the City's satisfaction or as directed by the City, for enforcement of AHFC's rights under this Agreement, the City may assume AHFC's rights and obligations under this Agreement, and may perform the obligations and enforce the rights of AHFC under this Agreement. The City will, if it determines that the Owner is not in default, pay Annual Contributions for the purpose of providing housing assistance payments with respect to the dwelling unit(s) under this Agreement for the duration of the HAP Contract.

Owner Default and AHFC Remedies

Owner Default

Any of the following is a default by the Owner under this Agreement:

1. The Owner has failed to comply with any obligation under this Agreement.
2. The Owner has committed any fraud or made any false statement to AHFC or the City in connection with this Agreement.
3. The Owner has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing assistance program.

AHFC Remedies: If AHFC determines that a breach has occurred, AHFC may exercise any of its rights or remedies under this Agreement.

AHFC must notify the Owner in writing of such determination. The notice by AHFC to the Owner may require the Owner to take corrective action (as verified by AHFC) by a time prescribed in the notice.

AHFC's rights and remedies under this Agreement include, but are not limited to: (i) terminating this Agreement; and (ii) declining to execute the HAP Contract for some or all of the units.

AHFC Remedy Not Waived: AHFC's exercise or non-exercise of any remedy for the Owner breach of this Agreement is not a waiver of the right to exercise that remedy or any other right or remedy at any time.

AHFC and Owner Relation to Third Parties

Selection and Performance of Contractor: AHFC has not assumed any responsibility or liability to the Owner, or any other party for performance of any contractor, subcontractor or supplier, whether or not listed by AHFC as a qualified contractor or supplier under the program. The selection of a contractor, subcontractor or supplier is the sole responsibility of the Owner and AHFC is not involved in any relationship between the Owner and any contractor, subcontractor or supplier.

The Owner must select a competent contractor to undertake rehabilitation or construction. The Owner agrees to require from each prospective contractor a certification that neither the contractor nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in contract by the Comptroller General or any federal Department or agency. The Owner agrees not to award contracts to, otherwise engage in the service of, or fund any contractor that does not provide this certification.

Injury Resulting from Work under this Agreement: AHFC has not assumed any responsibility for or liability to any person, including a worker or a resident of the unit undergoing work pursuant to this Agreement, injured as a result of the work or as a result of any other action or failure to act by the Owner, or any contractor, subcontractor or supplier.

Legal Relationship: The Owner is not the agent of AHFC and this Agreement does not create or affect any relationship between AHFC and any lender to the Owner or any suppliers, employees, contractor or subcontractors used by the Owner in the implementation of this Agreement.

Exclusion of Third Party Claims: Nothing in this Agreement shall be construed as creating any right of any third party (other than the City) to enforce any provision of this Agreement or the Contract, or to assert any claim against the City, AHFC or the Owner under this Agreement or the Contract.

Exclusion of Owner Claims against the City: Nothing in this Agreement shall be construed as creating any right of the Owner to assert any claim against the City.

AHFC-Owned Units

Notwithstanding Section ___ of this Agreement, AHFC and the Owner Relation to Third Parties, AHFC, or a subsidiary of AHFC, may be the Owner of and/or general partner or managing member associated with units assisted under the City of Austin Housing Trust Fund Local Housing Voucher Program.

Conflict of Interest

Interest of Members, Officers, or Employees of AHFC, Members of Local Governing Body, or Other Public Officials: No present or former member or officer of AHFC, no employee of AHFC who formulates policy or influences decisions with respect to the local housing choice voucher program, and no public official or member of a governing body or local legislator who exercises functions or responsibilities with respect to these programs, shall have any direct or indirect interest, during his or her tenure or for one year thereafter, in this Agreement or the HAP Contract.

The City may waive this provision for good cause.

Disclosure: The Owner has disclosed to AHFC any interest that would be a violation of this Agreement or HAP Contract. The Owner must fully and promptly update such disclosures.

Transfer of Agreement, HAP Contract, or Property

AHFC Consent to Transfer: The Owner agrees that the Owner has not made and will not make any transfer in any form, including any sale or assignment, of this Agreement, the HAP Contract, or the property without the prior written consent of AHFC. A change in the Ownership in the Owner, such as a stock transfer or transfer of the interest of a limited partner, is not subject to the provisions of this section. Transfer of the interest of a general partner is subject to the provisions of this section.

Procedure for AHFC Acceptance of Transferee: Where the Owner requests the consent of AHFC for a transfer in any form, including any sale or assignment, of this Agreement, the HAP Contract, or the property, AHFC must consent to a transfer of this Agreement or HAP Contract if the transferee agrees in writing (in a form acceptable to AHFC) to comply with all the terms of this Agreement and HAP Contract, and if the transferee is acceptable to AHFC. AHFC's criteria for acceptance of the transferee must be in accordance with the City requirements.

When Transfer is Prohibited: AHFC will not consent to the transfer if any transferee, or any principal or interested party, is debarred, suspended, subject to a limited denial of participation, or otherwise excluded under 2 CFR Part 2424, or is listed on the U.S. General Services Administration list of parties excluded from Federal procurement or nonprocurement programs.

Exclusion from Federal Programs

Federal Requirements: The Owner must comply with the requirements of 2 CFR Part 2424.

Disclosure. The Owner certifies that:

The Owner has disclosed to AHFC the identity of the Owner and any principal or interested party.

Neither the Owner nor any principal or interested party is listed on the U.S. General Services Administration list of parties excluded from Federal procurement and nonprocurement programs; and none of such parties are debarred, suspended, subject to a limited denial of participation, or otherwise excluded under 2 CFR part 2424.

Lobbying Certifications

The Owner certifies, to the best of the Owner's knowledge and belief, that:

- No Federally appropriated funds have been paid or will be paid, by or on behalf of the Owner, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of this Agreement or HAP Contract, or the extension, continuation, renewal, amendment, or modification of the HAP Contract.
- If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement or HAP Contract, the Owner must complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification by the Owner is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

Subsidy Layering

Owner Disclosure: The Owner must disclose to AHFC, in accordance with the City requirements, information regarding any related assistance from the Federal government, a State, or a unit of general local government (other than the City), or any agency or instrumentality thereof (other than AHFC), that is made available or is expected to be made available with respect to the contract units. Such related assistance includes, but is not limited to, any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

Limit of Payments: Housing assistance payments under the HAP Contract must not be more than is necessary, as determined in accordance with the City requirements, to provide affordable housing after taking account of such related assistance. AHFC will adjust in accordance with the City requirements the amount of the housing assistance payments to the Owner to compensate in whole or in part for such related assistance.

Prohibition of Discrimination

The Owner may not refuse to lease contract units to, or otherwise discriminate against, any person or family in leasing of a contract unit, because of race, color, religion, sex, national origin, disability, age, or familial status.

The Owner must comply with the following requirements:

- The Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100 et seq.;
- Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1959–1963 Comp., p. 652, and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107;
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1;
- The Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146;
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title;
- Title II of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.;
- 24 CFR part 8; 8.
- Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964–1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60;
- Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971–1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprise Development); and
- Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393, and 3 CFR, 1987 Comp., p. 245) (Women’s Business Enterprise).
- HUD’s Equal Access Rule at 24 CFR 5.105. [OGC- Nonconcurrency: This section failed to reference protections with respect to actual or perceived sexual orientation, gender identity, or marital status in accordance with the City’ Equal Access Rule at 24 CFR 5.105(a). Revising as indicated above is sufficient to resolve this concern.]

AHFC and the Owner must cooperate with the City in the conducting of compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and all related rules and regulations.

Owner Duty to Provide Information and Access to the City and AHFC

The Owner must furnish any information pertinent to this Agreement as may be reasonably required from time to time by AHFC or the City. The Owner shall furnish such information in the form and manner required by AHFC or the City.

The Owner must permit AHFC or the City or any of their authorized representatives to have access to the premises during normal business hours and, for the purpose of audit and examination, to have access to any books, documents, papers, and records of the Owner to the extent necessary to determine compliance with this Agreement.

Notices and Owner Certifications

Where the Owner is required to give any notice to AHFC pursuant to this Agreement, such notice shall be in writing and shall be given in the manner designated by AHFC.

Any certification or warranty by the Owner pursuant to this Agreement shall be deemed a material representation of fact upon which reliance was placed when this transaction was entered into.

The City Requirements

This Agreement and the HAP Contract shall be interpreted and implemented in accordance with all statutory requirements, and will all the City requirements, including amendments or changes in the City requirements. The Owner agrees to comply with all such laws and the City requirements.

EXECUTION OF THE AGREEMENT

AUSTIN HOUSING FINANCE CORPORATION
By:
Signature of Authorized Representative
Rosie Truelove, Treasurer
Name and Title of Authorized Representative
Date:
ESPERO AUSTIN AT RUTLAND, LP (OWNER)
By: VBG-Caritas Rutland Austin, LLC, General Partner
By: Caritas of Austin, Manager
By:
Signature of Authorized Representative
Jo Kathryn Quinn, President and CEO
Name and Title of Authorized Representative
Date:

[Signature Page to Agreement to Enter into Housing Assistance Payments Contract]